Bail Slip

The Appellant/Accused namely T.K.Palanisamy was directed to be released on bail as per order of this Hon'ble Court dated 9.11.2001 in Crl.M.P.No.8474/01 in Crl.A.No.1061/01.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 06.08.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.A.No.1061 of 2001

T.K.Palanisamy .. Appellant/Accused

Vs.

State by
The Sub-Inspector of Police,
Perundurai Police Station,
Erode District,
(Cr.No.185 of 2001) .. Respondent/Complainant

Prayer:- This appeal has been preferred against the judgment dated 10.10.2001 made in S.C.No.116 of 2001 on the file of the Principal Sessions Judge, Erode.

For Appellant :Mr.V.K.Muthusamy, Senior Counsel,
for Mr.M.M.Sundresh

For Respondents :Mr.V.R.Balasubramaniam
Additional Public Prosecutor

JUDGMENT

This appeal has been preferred against the judgment in S.C.No.116 of 2001 on the file of the Principal Sessions Judge, Erode. The accused, who has been convicted and sentenced under Section 3(1)(x) of the SC/ST (Prevention of Atrocities) Act, [herein after referred to as 'The Act' and under Section 341 and 332 IPC, is the appellant herein.

2.The learned trial judge, after furnishing copies under Section 207 of Cr.P.C., on his appearance, framed charges under Section 3(1)(x) of the Act, and under Sections 341, 332 & 506(ii) IPC and explained to the accused and when

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questioned, the accused pleaded not guilty. Before the trial Court P.W.1 to P.W.6 were examined and Ex.P.1 to Ex.P.9 were marked.

3.P.W.1 is the complainant. He is working as an environmental assistant in Perudurai Panchayat. According to him, while he was on duty on 21.4.2001 at about 9.00 am near old post-office Perundurai attending to cleansing the toilet along with P.W.4-Kandan, the accused came there and prevented them from proceeding with their work and when they refused to heed to his appeal, he abused by his (P.W.1's) caste (rf;fpyp jhnahsp) and asked them to go out of the place. Immediately the accused had kicked on the right hip and due to that he fell unconsciously. When P.W.4-Kandan, his co-worker intervened, the accused pushed him down and stamped on his chest. Immediately he went to his office and preferred a complaint to the Supervisor Periyasamy and also to Executive Officer. Since he has developed chest pain he went to the government hospital Perundurai and was admitted in the said hospital by the doctor therein as an inpatient for four days. While he was taking treatment in the hospital, a police officer from Perudurai Police Station came to the hospital and recorded his statement, which is Ex.P.1.

4.P.W.2 is the Tahsildar, who had issued Ex.P.2 to Ex.P.4, community certificates. Ex.P.2 & Ex.P.3 are relating to P.W.1 and P.W.4 respectively describing them as belonging to scheduled caste and Ex.P.4 is the community certificate relating to the accused showing that he belongs to backward community.

5.P.W.3 is the then Sub-Inspector of Police, Perundurai Police Station, who on 21.4.2001 at about 12.30 pm on intimation from the government hospital at Perundurai, went to the said hospital and recorded Ex.P.1, statement of P.W.1, and on the basis of the complaint he had registered the case under Perudurai Police Station Cr.No.185 of 2001 under Section 341, 323, 332 & 506(i) IPC and under Section 3(1) (x) of the Act. Ex.P.5 is the copy of the FIR.

6.P.W.4 is the co-worker of P.W.1 viz.Kandan. According to him, at the time of occurrence at the place of occurrence the accused had prevented him and P.W.1 from doing their work and when he intervened, the accused had abused him in filthy language and also slapped him and that he immediately preferred a complaint to Periyasamy, the Supervisor, and he along with P.W.1 went to the government hospital at Perundurai for treatment, where P.W.1 was admitted as an inpatient.

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7.P.W.5-Periyasamy, the Supervisor in Perundurai Panchayat Board, would depose that on 21.4.2001 at about 6.00 am all the environmental assistants were present and he had assigned work for P.W.1 and P.W.4 to clean the modern toilet at M.C.Road and thereafter he attended to his supervising work. When he came to his seat, P.W.1 & P.W.4 complained that the accused had assaulted them. Immediately he has preferred a complaint to his higher official Executive Officer, who had preferred a complaint to the police.

8.P.W.6 is the Investigating Officer. On seeing the FIR Ex.P.5 he had examined P.W.4 and recorded his statement and visited the place of occurrence and examined the witnesses and recorded their statements and prepared Ex.P.6-observation mahazar and had drawn a rough sketch-Ex.P.7. He had arrested the accused and produced him before the Judicial Magistrate for judicial remand. He has also obtained Ex.P.8-wound certificate for P.W.1 and Ex.P.9-wound certificate for P.W.4. After completing the formalities, he has filed the charge sheet against the accused on 28.6.2001.

9.When incriminating circumstances were put to the accused under Section 313 of Cr.P.C., the accused would deny his complicity with the crime. After going through the evidence both oral and documentary the learned trial Judge has convicted the accused under Section 3(1)(x) of the SC/ST (Prevention of Atrocities) Act, and sentenced him to undergo 6 months RI and a fine of Rs.1,000/- with default sentence, and convicted and sentenced the accused under Section 332 IPC to pay a fine of Rs.1,000/- with default sentence and also convicted and sentenced the accused under Section 341 IPC to pay a fine of Rs.1,000/- with default sentence. Both the accused have been acquitted for the offence under Section 506(ii) IPC. Aggrieved by the findings of the learned trial Judge, the accused has preferred this appeal.

10.Heard Mr.V.K.Muthusamy learned senior counsel appearing for the accused and Mr.V.R.Balasubramanian, the learned Additional Public Prosecutor and considered their respective submissions.

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11.Now the point for determination in this appeal is whether the chrage against the accused under Section 3(1)(x) of the Act and under Section 341 & 332 IPC imposed by the learned trial Judge is sustainable for the reasons stated in the memorandum of appeal?

12.The Point:- The learned senior counsel

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Mr.V.K.Muthusamy would focus the attention of this Court to an important flaw committed by the prosecution in this case. Admittedly soon after the occurrence P.W.1 has made a complaint to his higher official viz. the Supervisor of Perundurai Panchayat Union. In the cross-examination P.W.1 would admit that his supervisor Periyasamy had reduced to writing what he had narrated about the incident to him and that he had also signed in the said statement and gave to the Executive Officer at about 10.00 or 10.30 am on 21.4.2001 ie. about 1 ½ hours after the occurrence. P.W.5 is the said Periyasamy, the Supervisor of Perundurai Panchayat Union. P.W.5 would admit in the cross-examination that both P.W.1 and P.W.4 have presented a complaint about the occurrence to the Executive Officer at about 10.00 am on the date of occurrence, who in turn had forwarded the same to the Police Station at 10.30 am. But unfortunately the said complaint preferred by P.W.1 and P.W.4 immediately after the occurrence has not seen the light of the day. P.W.5 in his evidence would say that P.W.1 & P.W.4 have complaint that the accused had bet them. P.W.5 has not stated neither in the chief-examination nor in the cross-examination that P.W.1 & P.W.4 have complaint that the accused had abused them by caste. Only if the earliest complaint is placed before the Court then only it will be possible to see whether the accused abused both P.W.1 & P.W.4 at the time of occurrence by caste or simply they assaulted them at the time of occurrence. Further according to P.W.1, the accused at the time of occurrence has assaulted him by kicking him on the right side of the hip and that he fell down unconsciously and when P.W.4 intervened the accused had stamped on his chest. But in Ex.P.1-complaint he has alleged that the accused had kicked on his chest and landed blows on the chest of P.W.4-Kandan. P.W.4-Kandan in his evidence has stated that the accused at the time of occurrence had slapped him. But there is no specific overtact attributed against P.W.1 except by saying that the accused had abused him. P.W.4 has not specifically stated what are the abusive words used by the accused at the time of occurrence particularly he has not stated any abusive words said to have been attributed by the accused by affecting his caste. Both P.W.1 & P.W.4 would say that after making a complaint with P.W.5 they went to government hospital at Perundurai and were treated by the doctor. Wound certificates were produced by the Investigating officer P.W.6 in this case. There is no explanation forthcoming from the side of the prosecution for not examining the doctor, who had issued Ex.P.8 & Ex.P.9, wound certificates for P.W.1 & P.W.4 respectively. Apart from this, the learned senior counsel would also attack the case of the prosecution on the ground that the occurrence has not taken place within the public

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view. In support of his contention that prosecution has failed to prove that the incident has not taken place within the public view and hence an offence under Section 3(1)(x) of the Act will not attracted, the learned senior counsel relied on 1997(2) Crimes 119 (E.K.Nayanar Vs. M.A.Kuttappan), 1992 Crl.L.J.3054 (Karansingh and others Vs. State of M.P.,) and 1997 Cri.L.J.122 [Haridas s/o.Ajab Shinde Vs. State of Maharashtra (through P.S.O., Police Station Deoli)]. Even though in this case, the place of occurrence is said to be near a wedding mahal in M.C.Road, Perundurai near the old bus-stand at 9.00 am, no doubt the place is accessible to the public view, to show that the public have witnessed the occurrence apart from the complainant P.W.1 and his co-worker P.W.4, there is no independent witness was examined to corroborate the evidence of P.W.1. Even the co-worker of P.W.1 viz., P.W.4 has failed to corroborate the evidence of P.W.1 to show that at the time of occurrence, the accused had abused P.W.1 & P.W.4 by their caste. Sine the prosecution has failed to produce the earliest first information in this case, I am of the view that the benefit of doubt cast upon the case of the prosecution will certainly inures to the benefit of the accused. Point is answered accordingly.

13.In fine, the appeal is allowed and the judgment of the trial Court in S.C.No.116 of 2001 on the file of the Principal Sessions Judge, Erode, is set aside and the accused is relieved from all the charges levelled against him. Bail bonds shall stand cancelled. Fine amount, if any paid, shall be refunded to the accused.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1.The Principal Sessions Judge, Erode.
2.The Public Prosecutor, Madras High,
Madras.
3.The Superintendent, Central Jail, Madras.
4.The Sub-Inspector of Police,
Perundurai Police Station, Erode.
5.The Director General of Police,
Chennai-4.

+1cc to Mr.M.M.Sundresh,Advocate Sr 49154

NSM (CO)
km/13.8.

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